FILE COPY

FILED
SEP 17 1948
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1948

No. 285

FIRST STATE BANK OF STRATFORD,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT OF PETITION.

STERLING E. KINNEY,
WALTER G. RUSSELL,
DOROTHY ANN KINNEY,
310 Amarillo Building,
Amarillo, Texas,
Attorneys for Petitioner.

WARLICK LAW PRINTING CO., INC. — *Law Brief Printing* — Dallas — Harwood-9350

SUBJECT INDEX

Petition **Page**

Summary Statement of the Matter Involved 1– 3

Jurisdictional Statement 4

Question Presented 4

Reasons Relied Upon for Allowance of Writ:

Reason I 5– 6

Reason II 6– 8

Brief

Opinions of the Courts Below 9–10

Jurisdiction 9–10

Statement of the Case 10

Errors Relied Upon 10–11

Summary of Argument 11

Argument:

The petitioner by its declaration of notes as a dividend in kind did not realize income within the meaning of Section 22 (a) of the Internal Revenue Code.

I. This case requires application of the principle that a corporation does not realize income by its declaration of property as a dividend in kind 11–16

II. The application of the doctrine of anticipatory assignment of income to this case is improper and conflicts with authority 16–18

Conclusion 18–19

Appendix 21

Cases Cited

Page

Beach Petroleum Corporation, Ltd., T. C. Memo. Dkt. No. 3273 13

Blair v. Commissioner, 300 U. S. 5, 57 S. Ct. 330 ..... 6, 16

Commissioner v. Columbia Pacific Shipping Company, 77 F. (2d) 759 13

First Savings Bank of Ogden v. Burnet, 53 F. (2d) 919, 921 15

General Utilities & Operating Co. v. Helvering, 296 U. S. 200, 56 S. Ct. 185 ..... 5, 6, 12, 13, 16, 18

Hanan, Herbert G., T. C. Memo. Dkt. No. 1539 13

Helvering v. Horst, 311 U. S. 112, 61 S. Ct. 144 ..... 4, 6, 7, 10, 16, 17

Horne Oil Company, T. C. Memo. Dkt. No. 10286 ..... 13, 15

National Bank of Commerce v. Commissioner, 115 F. (2d) 875 14

Schiller, Avery R. v. Commissioner, 43 B. T. A. 594, 597-8 13

Transport, Trading & Terminal Corporation, 9 T. C. 247 13

United States v. Cummins Distilleries Corporation, 166 F. (2d) 17 14

Washburn Estate, Inc., J. L., T. C. Memo. Dkt. No. 1240 13

Statutes Cited

United States Code Annotated, Title 26, Section 22 (a) 2, 4, 10, 11

United States Code Annotated, Title 26, Section 117 (a) (1) 13

United States Code Annotated, Title 28, Section 347 4, 9

Treasury Rulings

I. T. 3121, 1937-2 C. B. 138, 139 13

Supreme Court of the United States

OCTOBER TERM, 1948

No...... .....

FIRST STATE BANK OF STRATFORD,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Fred M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States

Your petitioner respectfully shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED

This case involves the proper determination of the petitioner's liability for federal income and excess profits taxes for the year, 1942. The sole issue presented is whether this corporation by its distribution of notes as a dividend in kind realized income to the extent of $10,548.20 within the meaning of Section 22 (a) of the Revenue Act of 1938,

c. 289, 52 Stat. 447-584, as amended by Sections 1 and 3 of the Public Salary Tax Act of 1939, c. 59, 53 Stat. 574. [*26 U. S. C. A. Sec. 22 (a)*.]

On October 17, 1942, the petitioner declared a dividend in kind consisting of notes. The dividend resolution imposed only the obligation to distribute the notes in kind and did not create a cash obligation to be discharged by distribution of the notes. No valuation was placed on the notes either in the dividend resolution or in the findings of fact by the Tax Court of the United States. The basis of the notes distributed had been reduced to zero by deductions for bad debts in prior years. (R. 23-24.)

The notes, with all their rights, were assigned to the stockholders. Although the fact issue was disputed in the Tax Court of the United States, it was established that the petitioner did not retain control over the notes or the amounts collected subsequent to the dividend declaration. (R. 28-29.) Thus the issue for review is confined to the taxable effect of the resolution itself.

After the dividend declaration, collections in the amount of $11,662.71 were effected on the notes. Of the total amount collected, it was determined by the Commissioner of Internal Revenue that $10,548.20 constituted taxable income to the petitioner in 1942 as "recoveries on bad debts or as a profit on the distribution of a dividend in kind." (R. 9.) As a result of this and other uncontested income adjustments, the Commissioner asserted a deficiency of $813.91 in declared value of excess profits tax

and a deficiency of $28,793.28 in excess profits tax against the petitioner for the year, 1942. (R. 7.)

The petitioner filed its petition for redetermination of the deficiencies asserted in the Tax Court of the United States (R. 3-5), to which the respondent answered. (R. 19-21.) The petitioner alleged that the Commissioner erred in taxing to its collections in the amount of $10,548.20. Hearing on the merits was had at Dallas, Texas. (R. 2.) After review by the entire Court, findings of fact and the opinion, to which five judges dissented, were filed. (R. 21-32.) Reversing the determination of the Commissioner, it was held that the petitioner did not realize income by its declaration of property as a dividend in kind and that collections made subsequent to the dividend declaration were not income to the petitioner. (R. 26-30.) Decision was entered pursuant to an agreed computation. (R. 2.) Petition for review by the United States Circuit Court of Appeals for the Fifth Circuit was filed by the respondent. (R. 33-38.)

The United States Circuit Court of Appeals for the Fifth Circuit *en banc* entered its judgment on the 25th day of June, 1948, reversing the decision of the Tax Court of the United States. (R. 91.) The opinion, together with a concurring and two dissenting opinions, was filed on the 25th day of June, 1948. (R. 72-90.) It was held that the distribution of assets with a basis of zero constituted an anticipatory assignment of future income and that collections made subsequent to the dividend declaration were income to the petitioner.

JURISDICTIONAL STATEMENT

The judgment sought to be reviewed is the judgment of the United States Circuit Court of Appeals for the Fifth Circuit rendered on the 25th day of June, 1948 (R. 91), reversing the decision of the Tax Court on a matter involving the determination of income within the meaning of Section 22 (a) of the Revenue Act of 1938, c. 289, 52 Stat. 447-584, as amended by Sections 1 and 3 of the Public Salary Tax Act of 1939, c. 59, 53 Stat. 574. [*26 U. S. C. A. Sec. 22 (a).*]

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938 (28 U. S. C. A. Sec. 347.)

It is urged that this Court exercise its discretion to review because of the importance of the question in the administration of the revenue laws and because of conflict in principle of the decision below with that of decisions by this Court and by other circuit courts of appeals.

The jurisdiction of this Court to review by certiorari a judgment of a circuit court of appeals on the grounds urged was sustained in *Helvering v. Horst, 311 U. S. 112, 61 S. Ct. 144.*

QUESTION PRESENTED

Whether, within the meaning of Section 22 (a) of the Internal Revenue Code, the petitioner by its declaration of a dividend in property consisting of notes realized income to the extent of any collections thereafter made by its stockholders.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

REASON I.

The failure of the Circuit Court of Appeals to apply here the principle that a corporation does not realize income by its declaration of property as a dividend in kind marks the first judicial conflict with this principle since its pronouncement by this Court in *General Utilities and Operating Company v. Helvering, 296 U. S. 200, 56 S. Ct. 185.* The issue has been frequently litigated in the lower courts because of the persistent efforts of the Commissioner to obtain a decision to the contrary.

To reach the conclusion that its decision was not conflicting with the *General Utilities decision,* the Circuit Court had to rule that an asset which does not have a basis in excess of zero is not property or, as therein expressed, a capital asset for income tax purposes. (R. 83-84.) The determination that the notes here were not property violates the fundamental concept in taxation that the status of an asset is not dependent upon the amount of its basis. The decision on that point also conflicts with the principle of decisions in other circuit courts of appeals where non-capital assets without any basis were distributed as a dividend in property, *United States v. Cummins Distilleries Corporation (C. C. A. 6, 1948), 166 F. (2d) 17,* and where notes with a basis of zero were transferred as property for tax purposes in a reorganization, *National Bank of Commerce of Seattle v. Commissioner (C. C. A. 9, 1940), 115 F. (2d) 875.* It is the position of the peti-

tioner that the facts here do not present a case for distinction but a case for application of the *General Utilities decision.*

The basis of many assets may be reduced partially or completely by deductions against income for depreciation, depletion, amortization, worthlessness, and other charges against capital account. Still other assets are acquired without cost. Thus under the rationale of the Court below, the taxable effect of a dividend in many types of property will be dependent on the amount of the basis of the property distributed. A dividend in kind should not occupy the anomalous position in taxation of being an event whereby appreciation in value of property may or may not be realized. Application of the principle announced by the Circuit Court of Appeals will produce unnecessary confusion and untenable results in the administration of the revenue laws.

REASON II.

The decision of the Circuit Court of Appeals that the declaration of the notes here as a dividend in kind constituted an anticipatory assignment of income conflicts with the principles announced by this Court in *Helvering v. Horst, 311 U. S. 112, 61 S. Ct. 144,* and *Blair v. Commissioner, 300 U. S. 5, 57 S. Ct. 330.* In those decisions the principle was formulated that a gift of the right to income, as distinguished from a gift of all interests in property, was in itself realization of that income.

The Circuit Court of Appeals held that under the doctrine of the *Horst case* the declaration of a dividend in

kind is in itself realization of income. By so ruling, the Court transcended the doctrine of that case. The *Horst case* recognizes a gift as a method by which income may be realized. To hold that a dividend in kind is a method by which income may be realized is to establish a new principle in taxation. Whether under the revenue laws realization of income may occur through distribution of property to its equitable owners is an issue for determination of this Court.

By holding that the assignment of property with a basis of zero is an anticipatory assignment of income, the Circuit Court of Appeals ignored the fundamental distinction drawn by the above cases between assignments of all interests in property and a mere right to income. If all interests in appreciated property are assigned, as here, the basis of that property is immaterial under those cases. To hold that assignment of appreciated property with any basis constitutes an anticipatory assignment of income presents a fundamental issue for the determination of this Court.

To adopt the concept of realization of income of the Court below would produce inequitable results and confusion in the administration of the revenue laws.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court had in the case

numbered and entitled on its docket, *No. 12,183, Commissioner of Internal Revenue, Petitioner v. First State Bank of Stratford, Respondent,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court be reversed by the Court, and for such further relief as to this Court may seem proper.

Respectfully submitted,

STERLING E. KINNEY,
WALTER G. RUSSELL,
DOROTHY ANN KINNEY,
310 Amarillo Building,
Amarillo, Texas,
Attorneys for Petitioner.

Sterling E. Kinney

STERLING E. KINNEY,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1948

No......

FIRST STATE BANK OF STRATFORD,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINIONS OF THE COURTS BELOW

The opinion of the Tax Court of the United States is reported in 8 T. C. 831 and appears at Pages 21-32 of the Record. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit, rendered on June 25, 1948, has not been officially reported to date but the opinion in full appears at Pages 72-90 of the Record.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938 (28 U. S. C. A. Sec. 347.)

The judgment sought to be reviewed is that of the United States Circuit Court of Appeals for the Fifth Circuit rendered on the 25th day of June, 1948 (R. 91), reversing the decision of the Tax Court of the United States on a matter involving the determination of income within the meaning of Section 22 (a) of the Revenue Act of 1938, c. 289, 52 Stat. 447-584, as amended by Sections 1 and 3 of the Public Salary Tax Act of 1939, c. 59, 53 Stat. 574. [26 U. S. C. A. Sec. 22 (a).]

It is urged that this Court exercise its discretion to review because of the importance of the question in the administration of the revenue laws and because of conflict in principle of the decision below with that of decisions by this Court and by other circuit courts of appeals.

The jurisdiction of this Court to review by certiorari a judgment of a circuit court of appeals on the grounds urged was sustained in *Helvering v. Horst, 311 U. S. 112, 61 S. Ct. 144.*

STATEMENT OF THE CASE

This has been stated in the preceding petition under the heading "Summary Statement of the Matter Involved," which is hereby adopted and made a part of this brief.

ERRORS RELIED UPON

I.

The United States Circuit Court of Appeals for the Fifth Circuit erred in failing to apply to the facts here

the doctrine announced by this Court that a corporation does not realize income by its distribution of appreciated property as a dividend in kind.

II.

The United States Circuit Court of Appeals for the Fifth Circuit erred in holding that the petitioner effected an anticipatory assignment of income thereafter received by its stockholders, for the reason its holding improperly interprets Section 22 (a) of the Internal Revenue Code and is contrary to authority.

SUMMARY OF ARGUMENT

The petitioner by its declaration of notes as a dividend in kind did not realize income within the meaning of Section 22 (a) of the Internal Revenue Code. This case requires the application of the principle that a corporation does not realize income by its declaration of property as a dividend in kind. The application of the doctrine of anticipatory assignment of income to this case is improper and conflicts with authority.

ARGUMENT

The petitioner by its declaration of notes as a dividend in kind did not realize income within the meaning of Section 22 (a) of the Internal Revenue Code.

I. This case requires application of the principle that a corporation does not realize income by its declaration of property as a dividend in kind.

Here the dividend resolution imposed only the obligation to distribute the notes as a dividend in kind. After the dividend declaration, the petitioner did not exercise control over the notes or collection made. (R. 29.) Having accepted these facts for the purpose of its review, the Circuit Court of Appeals should have held that the petitioner did not realize income by its distribution of notes as a dividend in kind in accordance with the principle announced in *General Utilities and Operating Company v. Helvering, 296 U. S. 200, 56 S. Ct. 185.*

Here the notes had appreciated in value above a basis of zero, but their value was difficult to determine. (R. 25.) In the *General Utilities case*, the stock had appreciated more than a million dollars above its basis of two thousand dollars. In either case, the amount by which the property had appreciated over its basis represented potential income which had not been realized under any theory of accounting by the distributing corporation. Thus, as recognized by the Tax Court, the question in both cases is whether potential income was realized through the distribution of the appreciated property as a dividend in kind.

To distinguish its decision from that in the *General Utilities case*, the Circuit Court of Appeals held that the rule of that case is applicable only to distributions of capital assets. (R. 83-84.) No other Court interpreting the rule of the *General Utilities case* has inquired into the status of the property distributed or its basis. The courts have repeatedly stressed that the determination of the fact issue as to whether a dividend was declared in kind is

decisive of the question whether the corporation realized income by its distribution, *Commissioner v. Columbia Pacific Company (C. C. A. 9, 1935), 77 F. (2d) 759; Transport, Trading & Terminal Corporation, 9 T. C. 247; Horne Oil Company, T. C. Memo. Dkt. No. 10286; Beach Petroleum Corporation, Ltd., T. C. Memo. Dkt. No. 3273; J. L. Washburn Estate, Inc., T. C. Memo. Dkt. No. 1240, appeal dismissed (C. C. A. 8, 1945), 151 F. (2d) 1016; Herbert G. Hanan, T. C. Memo. Dkt. No. 1539, appeal dismissed (C. C. A. 2 and 3, 1945).*

To support its distinction between this case and the *General Utilities case*, the Circuit Court held that assets with a basis of zero do not constitute capital assets for income tax purposes. (R. 83-84.) The concept that the status of property as a capital asset depends upon the amount of its basis conflicts with the statutory definition of a capital asset contained in Section 117 (a) (1) of the Internal Revenue Code [26 U. S. C. A. Sec. 117 (a) (1).] Under the statutory definition, the notes here were capital assets to the same extent as the stock in the *General Utilities case*. Because deductions for worthlessness chargeable against capital account have been taken against current income, property does not lose its status or transferability as a capital asset, *Avery R. Schiller v. Commissioner, 43 B. T. A. 594, 597-8; I. T. 3121, 1937-2 C. B. 138, 139.* To hold otherwise is to engage in judicial legislation.

By its distinction between capital assets and non-capital assets, the Circuit Court probably meant to imply that the notes here were not property for income tax purposes.

(R. 77-78.) Its decision on this point conflicts with the case cited as authority, *National Bank of Commerce of Seattle v. Commissioner (C. C. A. 9, 1940), 115 F. (2d) 875.* There charged-off notes were transferred to another bank in a reorganization. Although loosely referred to as non-capital assets in the hands of the transferors, the Court apparently meant to imply only that the notes had a basis of zero. It was held that since the notes had a basis of zero to the transferors, their basis was zero to the transferee to whom subsequent collections were taxed. If the notes were not regarded as property, there would have been no reason to determine their basis in the hands of the transferors. It is never necessary to determine the basis of income as distinguished from property.

It is submitted that the decision of the Circuit Court also conflicts with the recent decision of the Sixth Circuit Court of Appeals in *United States v. Cummins Distilleries Corporation (C. C. A. 6, 1948), 166 F. (2d) 17.* There warehouse receipts for whiskey were distributed as a dividend in kind in liquidation to stockholders who held them jointly, as were the notes here. The amounts expended in production of the whiskey did not represent capital investments under any theory of accounting, and the whiskey or the warehouse receipts did not represent capital assets under the statutory definition. No other court has ever suggested that there is a distinction in the type of property which may be transferred as an ordinary dividend in kind and as a dividend in kind in partial or complete liquidation. The Circuit Court apparently recognized that property with a basis of zero could be effectively transferred as a dividend

in kind upon liquidation. (R. 77-78.) Logically, there should be no distinction in the tax effect or type of property subject to transfer as a dividend in kind, whether or not it is made in liquidation, *First Savings Bank of Ogden v. Burnet (App. D. C., 1931), 53 F. (2d) 919, 921.*

The rationale of the Circuit Court requires that the taxable effect of any dividend in kind be dependent on the basis of the property distributed. Whether the basis of the property had been reduced by depletion, depreciation, amortization, worthlessness, or any other charge against capital account, the reasoning of the Circuit Court would be equally applicable. A corporation would be deemed to have made an anticipatory assignment of income by distribution of oil property, the basis of which had been recovered by depletion, cf. *Horne Oil Company supra; Beach Petroleum Corporation, Ltd., supra.* By reason of the distribution in kind of property with an appreciated value of one thousand dollars and with a zero basis, income would be realized; but if property with an appreciated value of one thousand dollars and with an unreduced basis of ten dollars were distributed in kind, income would not be realized. The exact result which might attend application of the Court's decision to assets with a partially reduced basis is a matter for conjecture. To hold that the basis of property determines whether any event is an occasion for realization of income is to violate the fundamental concepts of taxation and to cause unnecessary confusion in the administration of the revenue laws.

Since the distinction asserted between the facts of the two cases is insupportable, the decision of the Circuit Court

of Appeals is in direct conflict with that of this Court in *General Utilities and Operating Company v. Helvering, supra.*

II. The application of the doctrine of anticipatory assignment of income to this case is improper and conflicts with authority.

The decision of the Circuit Court of Appeals that the declaration of the notes here as a dividend in kind constituted an anticipatory assignment of income conflicts and involves an improper application of the principles announced by this Court in *Helvering v. Horst, 311 U. S. 112, 61 S. Ct. 144,* and *Blair v. Commissioner, 300 U. S. 5, 57 S. Ct. 330.*

In *Blair v. Commissioner, supra,* it was held by this Court that the assignment as a gift of a right to trust income was not an anticipatory assignment of income. The donor was deemed to have effected an assignment of property consisting of his equitable interest in the trust principal together with his rights to the trust income. In *Helvering v. Horst, supra,* it was held that the assignment as a gift of an interest coupon which had been severed from the bond was in itself realization of income by the donor. The donor by his gift had assigned only a right to income and had retained his interest in the capital.

Here the notes, together with all their rights, were assigned to the stockholders through the medium of a dividend in kind. The petitioner did not satisfy any donative impulse by the delivery of property to its equitable owners.

The notes did not represent income to the petitioner at the time of the transfer under any theory of accounting.

The Circuit Court of Appeals held that the assignment of appreciated property with a basis of zero is an anticipatory assignment of income. (R. 77-78.) By its decision, the Court discarded the fundamental distinction drawn by the above cases between assignment of all interests in property and a mere right to income. Under the rationale of the Court, it would be necessary to ascertain only the basis of property to determine whether an anticipatory assignment of income had been made. Even in the field of gifts, the principle of the above cases never has been extended to distributions of appreciated property. Whether the assignment of appreciated property with a zero basis or any other basis is an anticipatory assignment of income presents a fundamental issue for the determination of this Court.

The Circuit Court of Appeals relied upon the *Horst case* as authority that the declaration of a dividend in kind is in itself realization of income thereafter collected by stockholders. By its ruling, the Court did not follow the principle of the *Horst case;* it evolved an entirely new concept of realization of income. The *Horst case* recognizes a gift as a method by which income may be realized. Whether under the revenue laws a dividend in kind may be added to the methods of realization is a fundamental issue for determination by this Court.

Even assuming its constitutionality, there would appear to be no justification for extending the concept of realiza-

tion of income to assignments of appreciated property. Both in the fields of gifts and dividends in kind, the appreciation in value of the property assigned does not escape taxation. A donee holds appreciated property at the same basis as his donor. When the donee sells the property, any income thus realized is taxable to the donee. Property which is declared as a dividend in kind must be reported by stockholders upon receipt as income to the full extent of its market value. (R. 84-85.) Any amounts which the stockholders subsequently collect over the fair market value of the notes are also taxable to them. Thus there is no justification for application of the doctrine of anticipatory assignment of income to assignments of appreciated property, either as a dividend in kind or as a gift.

CONCLUSION

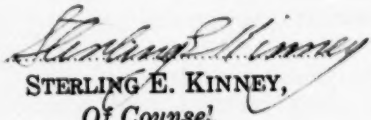
An unnecessary and confusing situation is created in the administration of the revenue laws by the decision of the Circuit Court of Appeals that the distribution of property with a zero basis is an anticipatory assignment of income. The decision of the Circuit Court transcends all previous authority and evolves a new principle of taxation which cannot be justified or supported by authority.

The refusal of the Circuit Court to hold that income is not realized through the distribution of a dividend in kind, however measured, is in direct conflict with the principle of this Court announced in *General Utilities and Operating Company v. Helvering, supra.* For the uniformity which has attended the acceptance of that principle, the Circuit Court has substituted diversity and confusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

Respectfully submitted

STERLING E. KINNEY,
WALTER G. RUSSELL,
DOROTHY ANN KINNEY,
310 Amarillo Building,
Amarillo, Texas,
Attorneys for Petitioner.



STERLING E. KINNEY,
Of Counsel.

APPENDIX

Statutes

Section 22 (a) of the Revenue Act of 1938, c. 289, 52 Stat. 447-584, as amended by Sections 1 and 3 of the Public Salary Tax Act of 1939, c. 59, 53 Stat. 574 [26 U. S. C. A. Sec. 22 (a)] provides:

> "Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly. In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income.